IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Arbitration Appeal Nos. 7 of 2003,
8 of 2003, 9 of 2003 and 10 of 2003.

Date of decision : 25.9.2008.

Arb. Appeal Nos. 7/03 & 8/03

Ramesh Kumar. Appellant

Versus

HPSEB Respondent.

Arb. Appeal Nos. 9/03 & 10/3

HPSEB. Appellant.

Vs.

Ramesh Kumar Respondent.

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The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?[1] *No.*

For the Appellant: Mr. Neeraj Gupta, Advocate.

For the Respondent-HPSEB : Mr. J.S.Bhogal Sr. Advocate with
Mr. Suneet Goel, Advocate.

Per Deepak Gupta, J.

These four appeals are being decided by a common judgement since common question of law and facts are involved in these appeals.

It would be pertinent to mention that Shri Ramesh Kumar (here-in-after referred to as the contractor) entered into two separate contracts with the H.P.State Electricity Board for construction of two blocks of type-1 quarters and type-II quarters, respectively, at Darlaghat District

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes.***

Solan. There was an arbitration clause in both the contracts whereby disputes arising between the parties were to be referred to the Arbitrator. Dispute arose and they were referred to the sole arbitration of Shri J.P.Gupta, the then Superintending Engineer of the Board. In both the cases, the Arbitrator made two separate awards on 5th March, 2001 whereby he allowed certain claims to the contractor. Dissatisfied by the awards, the Board filed objections, challenging the awards. The main ground of challenge, with which we are concerned in the appeals, was that the awards are not reasoned awards, as contemplated under Section 31 of the Act. In both the cases, the learned Single Judge after going through the awards came to the conclusion that the awards are not reasoned awards. However, after holding that the awards are not reasoned awards, he allowed certain claims and set-aside certain claims. Both the parties are aggrieved by the order of the learned Single Judge, hence, these appeals.

Once the learned Single Judge came to the conclusion that the awards were not reasoned awards, which was the mandate of Section 31 of the Arbitration and Conciliation Act, 1996, the learned Single Judge could not have donned the role of an appellate authority and decided the claims of the parties on merits. The Arbitrator had awarded certain claims in favour of the contractor. If no reasons were given, the only recourse open was to set-aside the awards and remit the same to the Arbitrator to make fresh awards giving reasons.

We have also gone through the awards of the Arbitrator and find that there is no reasoning in the same. It cannot be deduced from

the awards as to what was the reason which weighed with the Arbitrator. It is settled law that reasons are the links between the materials on which certain conclusions are based and the actual conclusions. A reasoned award is necessary so that the parties as well as any Court dealing with the award can decipher as to what weighed with the Arbitrator while awarding a particular amount. Once the award was without any reason, the learned Single Judge could not have himself delved into the merits of each claim. This is not the scope of Section 34 of the Arbitration and Conciliation Act, 1996. Accordingly, we set-aside the judgements of the learned Single Judge and remit these awards to the Arbitrator.

We have been informed that Shri J.P.Gupta, the original arbitrator, has unfortunately expired. We had asked the parties if they are agreeable to an agreed Arbitrator. They have submitted that they agree to the appointment of Shri S.K.Sharda, Retd.Chief Engineer, Maan House, Shankli, Shimla, as the Arbitrator in both the cases. Accordingly, the matters are referred to the arbitration of Shri S.K.Sharda. His fees is fixed at Rs.20,000/- in each case. It is made clear that the arbitrator shall not record any evidence and shall commence the arbitration proceedings from the stage of arguments and shall thereafter pass reasoned awards. In view of the fact that this disputes relate to the year 1994, and also in view of the fact that the Arbitrator only has to re-hear the matter and pass a reasoned award, we direct the learned Arbitrator to decide the matters as early as possible but in any event not later than 31st December, 2008.

During the pendency of the proceedings, certain amounts were released in favour of the contractor, subject to his furnishing an

undertaking to the satisfaction of the Registrar General of this Court to the fact that in case of failure of these appeals he would refund this amount to the appellant with interest at the rate of 12% per annum. We direct that these undertakings shall continue to remain in force till the Arbitrator passes these awards. In case, the Arbitrator dismisses the claim(s) of the contractor or the amount(s) awarded in favour of the contractor are less than what has been released in his favour he shall refund the entire amount/excess amount alongwith interest at the rate of 12% per annum in terms of the undertaking within three weeks of the award. It is also made clear that in such an eventuality, the mere fact that the contractor files objections to the awards, would not entitle him to retain the amount released in his favour.

All the appeals are disposed of in the aforesaid terms.

(Deepak Gupta), J.

September 25, 2008 (V.K.Ahuja), J.

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